

# National Energy Systems Company

335 Parkplace • Suite G110 • Kirkland, WA 98033 • FAX (425) 803-6902 • Phone (425) 889-1000

TELECOPY COVER LETTER

FAX: (425) 803-6902

DATE: 05/24/04

TIME:

TO: Mark Maher  
Chuck Meyer

FAX NUMBERS: 360.418.8433  
360.418.8433

FROM: Daren Anderson/wm

RE:

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## National Energy Systems Company

335 Parkplace • Suite G110 • Kirkland, Washington 98033 • Fax 425-803-6902 • Phone 425-889-1000

May 24, 2004

Brian D. Altman  
Transmission Business Line TM-OPP-2  
Bonneville Power Administration  
P.O. Box 61409  
Vancouver, WA 98666

Re: Bonneville Power Administration's Proposed  
Large Generator Interconnection Procedures and  
Large Generator Interconnection Agreement

Dear Brian:

Attached please find NESCO's comments on BPA's proposed LGIA and LGIP that BPA plans to adopt to comply with FERC's Order Nos. 2003 and 2003-A. In addition to the legal issues raised in the comments, I would like to address three critical policy issues posed by BPA's approach to its proposed LGIA.

### 1. DOUBLE CHARGING

As our detailed comments point out, BPA's current position, by assuming that substation interconnection costs are directly assigned and are not eligible for Transmission Credits, is in direct conflict with FERC's "and" pricing policy, and effectively double charges NESCO and the Plymouth Generation Facility ("PGF") for network transmission service. First, PGF will be required to include substation costs in its overall project cost and charge purchasers for these costs. Among other policy issues, this severely and inequitably penalizes PGF relative to IPPs that are able to interconnect with IOU transmission systems where interconnection substation costs would be either funded by the IOU and rolled into IOU rates, or be eligible to receive offsetting credits if funded by the IPP. Second, PGF would still have to pay full BPA transmission charges for the delivery of power to Northwest purchasers. Such double charging not only violates FERC's pricing policies in an explicit fashion, it is inequitable to IPPs and effectively provides a rate discount to existing transmission customers (other than those customers who purchase PGF's output with these "extra" costs included in the delivered price).

### 2. DELAY GENERATION DEVELOPMENT

Because new 500 kV substations typically cost \$10-12 million, the continuing risk that these costs will be directly assigned to generators will delay new projects. As the attached comments point out, there is no legal need to conduct a Section 7(i) proceeding of any type to resolve this issue. If BPA instead opts to resolve this issue in the general transmission rate case, IPPs will have to wait until October 1, 2005, before they can finance projects. BPA's action will delay roughly, 1500 mw of new generation for 16+ months. It is difficult to square this outcome with the Administrator's statements about encouraging new generation.

Brian D. Altman  
May 24, 2004  
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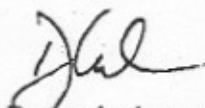
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3. POLITICAL EXPOSURE

As BPA well knows, the degree to which it deviates from established FERC policies gives the agency considerable political exposure in non-Northwest sections of the country. This concern was a significant factor in BPA's adoption of FERC's OATTs in the mid-1990s, and is a fact of political life for BPA. By violating FERC's "and" pricing in such an explicit fashion, BPA will give other regions, and national generator/utility organizations, an open invitation to allege discrimination in BPA's treatment of one class of customers. Once discrimination in transmission service is alleged, similar allegations became more credible regarding other BPA practices. BPA's action in this case will be especially problematic because: (1) three major Northwest customer/constituent groups (i.e., NIPPC, RNP and Northwest IOUs) will vocally and vociferously object; and (2) the policy, by double-charging generation, will not remedy any transmission or rate problems identified by BPA. In fact, it will subsidize existing transmission users, especially publicly owned utilities, at the expense of new generation.

For the reasons listed above, and those described in the attached comments, NESCO strongly urges BPA to either fund the cost of new interconnection substations and roll the costs into existing rates, or provide transmission credits if interconnection substations must be financed by generators. To avoid substantial delays in generation development, simply adopt this revised policy now in your LGIA, rather than diverting it into any type of future Section 7(i) proceeding.

Sincerely,



Darren Anderson  
Vice President

cc: Mark Maher, Senior VP, TBL  
Chuck Meyer, VP, Transmission Marketing & Sales

NATIONAL ENERGY SYSTEMS'S ("NESCO") COMMENTS  
ON  
BPA'S PROPOSED LARGE GENERATOR INTERCONNECTION  
PROCEDURES ("LGIP") AND LARGE GENERATOR  
INTERCONNECTION AGREEMENT ("LGIA")

NESCO endorses and supports the comments submitted by the Northwest Independent Power Producers Coalition ("NIPPC"), and NESCO urges BPA to adopt NIPPC's suggested changes in BPA's final LGIP and LGIA. NESCO also believes that BPA has erred in deleting Transmission Credits for Interconnection Customer funded Network Upgrades.

TRANSMISSION CREDITS

Transmission Credits for Network Upgrades are vitally important to the economics of the Plymouth Generating Facility (the "PGF"). Without Transmission Credits, the cost of power from PGF will be unreasonably burdened, and the economic viability of PGF will be affected. However, BPA's proposed LGIA deletes provisions for Transmission Credits. BPA's proposed elimination of Transmission Credits is inconsistent with the Federal Energy Regulatory Commission's (the "Commission") Order No. 2003 and Order No. 2003-A.

BPA may have incorrectly assumed that it is not required to offer Transmission Credits because it is a non-public utility and it believes that all non-public utilities do not have to offer Transmission Credits. The Commission's formulation is more complex. The Commission distinguishes non-public utilities that previously filed a "safe-harbor" open access transmission tariff ("Tariff") from non-public utilities that have not filed a "safe-harbor" Tariff.

Non-public utilities that filed a Tariff that substantially conforms to or is superior to the Commission's *pro forma* OATT receive a "safe harbor" guarantee of open access on public utilities' transmission systems and, if such non-public utilities want continued "safe harbor" treatment, they must adopt an LGIA that substantially conforms to or is superior to the Commission's *pro forma* LGIA. "Under Order No. 2003, a non-public utility that has a 'safe harbor' Tariff must add to that Tariff an interconnection agreement and interconnection procedures that substantially conform to or are superior to the *pro forma* LGIP and LGIA if it wishes to continue to qualify for 'safe harbor' treatment." Order No. 2003-A at P 773 (emphasis added). The Commission repeated the principle in stating that a non-public utility is not required to offer Transmission Credits to a public utility's Affiliates if "the non-public utility has not voluntarily filed a 'safe-harbor' tariff." *Id.* at P 781. BPA filed a Tariff, BPA receives the benefit of "safe harbor" treatment, and BPA must file an LGIA that substantially conforms to or is superior to the Commission's *pro forma* LGIA to continue to receive "safe harbor" treatment.

"A non-public utility that owns, controls, or operates transmission facilities, that does not have a 'safe harbor' Tariff and that seeks Transmission Service from a public utility that invokes the reciprocity provision, must either satisfy its reciprocity obligation under a bilateral agreement or ask the public utility to waive the reciprocity condition." *Id.* at P 773 (emphasis added). The



Commission notes that "[r]ates, terms and conditions contained in a bilateral agreement are subject to case-by-case review." The standard for such review is whether the non-public utility is providing service comparable to that which it provides itself.

An interpretation of Order No. 2003 and 2003-A, and Order No. 888, that enables a non-public utility to include in its LGIA, LGIP and Tariff only those provisions that the non-public utility believes it offers to itself would result in non-public utility LGIAs, LGIPs and Tariffs that bear little resemblance to the Commission's *pro forma* LGIA, LGIP and Tariff. Such filings would meet the requirement that a non-public utility offer public utilities service comparable to the service a non-public utility provides to itself, and be sufficient, on a case-by-case basis, for the non-public utility to receive service on public utility systems. Such filings cannot, however, meet the requirements for a "safe harbor" filing. If BPA limits itself to providing LGIA service that is comparable to the treatment it provides its own and affiliate generation, then BPA cannot expect Interconnection and Transmission Customers, or the Commission, to acquiesce in BPA's claim that BPA's LGIA substantially conforms to or is superior to the Commission's *pro forma* LGIA.

Definitions of "Network Upgrades" should be clarified to explain which additions, modifications, and upgrades are covered under BPA's proposed LGIP and LGIA. BPA's Generation Interconnection Direct Assignment policy states that "Generator Interconnection Facilities do not include facilities located beyond the line terminal at the nearest network substation, except for the costs associated with communication, control, metering, telemetry, protection, RAS and ICCP equipment or replacements." Presumably, BPA intends for Network Upgrades, as used in its proposed LGIP and LGIA, to be synonymous with the term Generator Interconnection Facilities. Clarification will confirm that an Interconnection Customer will not be required to fund the cost of Network Upgrades beyond Generator Interconnection Facilities.

NESCO was told that additions, modifications, and upgrades necessary to deliver power beyond interconnection substation facilities will receive transmission credits to refund such costs advanced by Transmission Customers. BPA's overall policy on funding Network Upgrade costs and transmission credits will be incomplete until and unless BPA publishes its policy with respect to such Network Upgrade costs. The full policy should state what BPA has announced: Transmission Customers responsible for providing the funds to design and construct Network Upgrades will receive Transmission Credits.

BPA staff told NESCO that BPA will provide Transmission Credits for upgrades to BPA's Transmission System that are necessary to deliver power from substation interconnection facilities to a Point of Delivery. If this is in fact BPA's intent, i.e., that Network Upgrades other than interconnection facilities, will be given transmission credits, then the entire issue is considerably narrowed. In such a case, the issue is whether the costs of substation interconnection facilities needed to integrate the generator into the main grid are:

- 1) Directly assigned and not eligible for transmission credits;
- 2) Funded by BPA and the cost rolled into the BPA transmission rates; or

- 3) Financed up front by the generator, but still receive Transmission Credits.

We believe either number 2) or 3) above are required by FERC Order No. 2003-A, and that BPA, as a matter of prudent policy, should allow credits for Interconnection Customer funded substation facilities.

In the case of PGF, whether or not we receive credits for our substation will make a \$10 to \$12M difference in the overall project cost. This degree of uncertainty, if not timely resolved, will lead to substantial delays in project completion. Since we cannot finance PGF until we have resolution on this issue, the ultimate result (especially if BPA insists on delaying resolution until the 2005 transmission rate case), will be a 15 month delay in PGF's commercial operation date. More importantly, we suspect this uncertainty created by BPA may similarly delay the commercial operation dates of several other required generation projects, i.e., Frederickson II, Summit Westward, Port Westward and Cherry Point. If our suspicion is confirmed, BPA's delay in resolving the substation credit issue would effectively delay all pending Northwest generation projects, totaling some 1600 MW, by 15 months.

BPA's proposed LGIA, whether it excludes all Network Upgrades from receiving credits or just interconnection substations, clearly violates FERC's "and" pricing policy. NESCO concurs with NIPPC's comments that BPA effectively will charge twice for the same service. If BPA's adopts its proposed LGIA, PGF will be forced to recover the cost Network Upgrades from its customers, and PGF's customers will pay twice for the same service: once for Network Upgrade costs in their bills for power, and then for BPA Transmission Service.<sup>1</sup> It does not seem good public policy for BPA to say, in defense of its decision to not provide Transmission Credits, that it *can* charge twice, unlike PGE, Avista, PacifiCorp, and PSE, because it is a Federal agency.

BPA's transmission system is an essential part of the region's power system. We believe that BPA should include Transmission Credit provisions because BPA has a public trust responsibility. BPA's mission is to work with others in providing the region with an adequate, efficient and economical power supply, and to integrate and transmit power from non-Federal generating facilities. BPA can better achieve its mission by providing interconnection service that conforms to the *pro forma* LGIA Transmission Credit provisions.

<sup>1</sup> "Entergy argues that its direct assignment of the costs of these facilities to Duke does not violate the Commission's pricing policies because the charges will not be reassessed in the future and are not assessed as part of the transmission rates Entergy charges to Duke. This argument misses the point, however. The Commission prohibits "and" pricing because it improperly charges the *same customer* twice for use of the grid (the entire price of these grid upgrade costs (through direct assignment) and a portion of all other grid costs (through a transmission rate)), not as Entergy argues, because it collects twice for the specific upgrade at issue. The facilities at issue are network facilities, and the cost of these facilities cannot be directly assigned to Duke. While Commission policy allows the transmission provider to charge a transmission rate that is the higher of an incremental or a rolled-in rate, an incremental rate is not the same as direct assignment." *Duke Energy Hinds, LLC, Duke Energy Hot Spring, LLC, Duke Energy Southaven, LLC, and Duke Energy North America, LLC (Complainants) v. Entergy Services, Inc. and Entergy Operating Companies (Respondents)*, 102 FERC ¶61,068, fn. 25 (2003) (emphasis in original).

## PROCESS FOR ADOPTION OF TRANSMISSION CREDITS

BPA staff said that provisions for Transmission Credits need to be adopted in a rate case proceeding under Section 7(i) of the Regional Act. We respectfully disagree. We do not believe that Transmission Credits are a "rate." Credits applied against an adopted rate can be a "rate" if the credits are for a service, are meant to induce behavior in the party receiving credits, or are a means of accounting for the different cost of providing service to a customer or class of customers. Transmission Credits required by the Commission's *pro forma* LGIA are not of this character.

In our case, PGF will fund the cost of certain facilities that will be a part of BPA's main grid transmission system. BPA will own, operate and maintain these main grid facilities. These facilities will not be an asset of PGF, and PGF does not expect to make a gift of the funds used by BPA to construct these facilities because PGF expects to be repaid the amounts it provides to BPA for these facilities.

The Commission stated that "while Network Upgrades will be funded initially by the Interconnection Customer (unless the Transmission Provider elects to fund them), the Interconnection Customer would then be entitled to a cash equivalent refund (i.e., credit) equal to the total amount paid for the Network Upgrades." Order No. 2003, P 22 (emphasis added). Even the *pro forma* LGIA section heading for Transmission Credits is titled, "*Repayment for Amounts Advanced for Network Upgrades.*" LGIA Section 14.4.1.

Transmission Credits are a form of net billing, not "rates." Transmission Credits do not reflect the cost of service to a particular customer, or any other cost of service or rate design consideration. Transmission Credits simply provide a means for refunding amounts advanced for Network Upgrades. BPA and an Interconnection Customer will have offsetting obligations: (i) the Interconnection Customer, or its power customer, to pay for the cost of Transmission Service associated with the generating facility; and, (ii) BPA to refund the cost advanced by the Interconnection Customer for Network Upgrades. The *pro forma* LGIA establishes an Interconnection Customer's funding obligation, and BPA's means of repayment through Transmission Credits.

We believe that BPA staff made a good faith start in the proposed LGIA and LGIP. We hope that BPA will now fully comply, to the extent permitted by its authorities, with Order No. 2003 and Order No. 2003-A. There are many small, non-public utilities that will find it infeasible to adopt the LGIA, LGIP and Tariff, and the Commission has found a way for them to receive Tariff service from public utilities by allowing them to only offer services that are comparable to the services they offer their own generation, or affiliate generation. BPA, one of the largest transmission providers in the country, is not in the position of a small, non-public utility. Without violating its statutory authorities, and without surrendering its non-public status, BPA can adopt an LGIA that includes Transmission Credit provisions.